

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2100 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NAGESH BHARATRI GHODA

Versus

GUJARAT TOURISM CORP LTD

Appearance:

MR HJ NANAVATI for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: /07/2000

CAV JUDGEMENT

It is beyond that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or quasi judicial decisions ought to conform. The principles on which they rest are, we think, implicit in the rule of law. Their observance is demanded by our nation and sense of justice.

A monkey does not decide an affair of the forest.

Doth our law judge any man before it hear him and know what he doeth.

Learned advocate Mr. H.J.Nanavaty is appearing for the petitioner. Learned advocate Mr. Vyas is appearing for M/s. Trivedi and Gupta for the respondents.

Brief facts of the present petition are as under:

The petitioner was directly appointed as Manager Gr. III vide order dated 28th November, 1979 at Shukla Tirth Rest House in the pay scale of Rs.260-400. Initially, the petitioner was appointed as Manager Gr.III on probation for a period of six months and, thereafter, the petitioner was confirmed by the Corporation on the said post of Manager Gr. III. It is necessary to be mentioned that some of the employees who were sent on deputation in the corporation by the Government were also placed in the pay scale of Rs. 260-400 which was being paid to the Manager Gr. III. The petitioner had joined the services as Manager Gr. III at Shukla Tirth Rest House. At that time, the business of the said rest house was approximately Rs.7000/- per year but thereafter, according to the petitioner, because of his hard and sincere work, business of the rest house had increased from Rs. 7000/- to Rs. 14000/- per year. Thereafter, the petitioner was transferred to Hajira in the year 1982. Even at Hajira Rest House also, the petitioner was able to get good result in income. Thereafter, the petitioner was promoted from the post of Manager, Gr.III to the post of Manager Gr.II in the pay scale of Rs.330-500 by order dated 30.12.1983. The respondent corporation by order dated 23.5.1984, had upgraded the post of Manager from the pay scale of Rs.330-560 to Rs.425-700 with effect from 19.5.1984. In the said order, the respondent corporation has given name of ten Rest Houses which were upgraded by the corporation with effect from 19.5.1984. When the said order was issued by the corporation, at the relevant time, the petitioner was

working on the post of Manager, Gr.II in the scale of Rs. 330-560 at Hajira Rest House. The grievance of the petitioner after the order dated 23rd May, 1984 is that he is entitled to the pay scale of Rs. 425-700 because of upgradation of the scale of Rs.330-560 to Rs.425-700. Therefore, the petitioner had made representation on 28th October, 1985 to the Managing Director of the respondent corporation inter alia pointing out that the employees who have been sent on deputation initially and initially who were placed in the pay scale of Rs.260-400 like the petitioner and other employees who were directly recruited have been given the benefit of pay scale of Rs.425-700 while petitioner has not been given such benefit though he is senior to some of those employees and similarly situated is singled out in granting the pay scale. In response to the representation dated 28.10.1985, when no response was given by the respondent corporation, again the petitioner had made another representation dated 18.11.1985. Thereafter, again on 13.12.1985, 14th May, 1986, 8th July, 1986, 29th September, 1986, 9th December, 1986, 15th January, 1987 and 17th April, 1987, the petitioner had made representations which, according to the petitioner, were received by the respondent corporation but no response was given to those representations by the respondents in respect of the grievance raised by the petitioner in those representations that he is entitled to the pay scale of Rs.425-700 on the basis of the office order dated 23.5.1984 wherein the post of Manager Gr.II has been upgraded from the pay scale of Rs.330-560 to Rs. 425-700.

The respondent corporation, thereafter, transferred the petitioner as a Manager of Hotel Girnar at Junagadh by order dated 12th February, 1987, the petitioner had given charge to his successor at Hajira and had joined as Manager of Hotel Girnar at Junagadh on 20th February, 1987. The respondent corporation thereafter passed an order on 25th February, 1987 reverting the petitioner in the post of Assistant Manager without any adverse effect in getting pay scale of Rs. 330-560. Said order was passed as per the order of the Managing Director of the respondent corporation. In the said order, it was directed that the petitioner has to work under one Mr. R.L. Bhatt who has been promoted as Manager from the post of Tourist Officer. Said order of Assistant Manager dated 25.2.1987 was accepted by the petitioner under protest and submitted his representation immediately on 28th February, 1987 inter alia pointing out that the said order is amounting to reversion without any charge and the same is illegal and discriminatory.

Again the petitioner had made representation to the Managing Director on 2nd March, 1987 and also met personally to the Managing Director of the respondent corporation at Gandhinagar. The Corporation gave reply to the petitioner on 27th March, 1987 that the petitioner was degraded from the post of Manager Gr. II to the post of Assistant Manager on the basis of the administrative convenience or in the interest of administration which will not adversely affect the salary of the petitioner. The petitioner thereafter met the Managing Director on 2nd March, 1987 wherein as per the averments made in the petition, the Managing Director had given assurance to the petitioner that as Hotel Girnar had recently started and he would examine the matter and would take necessary/appropriate action. On the basis of the assurance given by the Managing Director, on 2nd March, 1987, according to the petitioner, he had not immediately approached this court against the order of reversion dated 25.2.1987 and has waited for favourable consideration in view of the assurance given by the Managing Director as averred in the petition. It is the case of the petitioner that there was no rule or guidelines for the appointment of Manager and for the fixation of pay and pay scale and for upgrading or degrading the post which was solely left on the discretion of the authorities of the respondent corporation. It is further pointed out by the petitioner in this petition that the respondent corporation was established in the year 1978. At that time, the respondent corporation was not having its own employees/staff and, therefore, the State Government had sent its employees on deputation from different departments to the respondent corporation. Said employees sent on deputation were placed in the pay scale of Rs.260-400. Thereafter, the respondent corporation had also appointed the employees from the open market and the petitioner was one of such employees who was directly recruited by the corporation from the open market. Almost all these employees were initially placed in the pay scale of Rs. 260-400 and later on due to the upgradation or due to revision of the pay scale, they were placed in the pay scale of Rs. 425-700 whereas the petitioner was not given the benefit of revision of pay scale for no reason and without any basis. According to the petitioner, some employees junior to him have also been given such pay scale and the details of such juniors have been given by the petitioner in paragraph 7 of the petition. In para 7 of the petition, the petitioner had given details in respect of (1) P.J. Kamdar, (2) D.M.Jadeja, (3) R.B. Mehta, (4) K.N.Lakhdhir. According to the petitioner, all the aforesaid four employees were

appointed (absorbed) in the corporation in the year 1980 and like the petitioner, initially, they were placed in the pay scale of Rs. 260-400 and subsequently, they were given the pay scale of Rs. 425-700. According to the petitioner, all the said four employees were junior to the petitioner and yet, they were given the pay scale of Rs.425-700 while the petitioner has not been given such benefit. The petitioner has also pointed out that in his entire career, the petitioner has never received any adverse remarks and no punishment has been imposed against the petitioner and that his service record is quite clean and dotless in all respects and yet he has not been given the pay scale of Rs.425-700 while his juniors as aforesaid have been given such pay scale. The post of Manager Gr.II which was upgraded in respect of ten rest houses from Rs.330-560 to Rs. 425-700 wherein the nature of work, duties, responsibilities and function of all these Managers including the petitioner herein are same and they are governed by the same recruitment rules. There was no slightest difference in respect of nature of work and responsibility and qualification. In view of the above, according to the petitioner, the respondent corporation was not justified in not giving the pay scale of Rs.425-700 while giving the same benefit to the employees junior to the petitioner and, therefore, the petitioner has filed the present petition and has claimed declaration that the petitioner is entitled to be placed in the pay scale of Rs.425-700 with effect from 23.5.1984 which is applicable to the similarly situated Managers and also for directing the respondents to place the petitioner at appropriate stage in the pay scale of Rs.425-700 and refix the salary of the petitioner accordingly and for quashing and setting aside the order dated 25.2.1987 passed by the respondent NO. 3 as being discriminatory and without any authority of law. The petitioner has also prayed for a declaration that the petitioner is entitled to work as Manager of Hotel Girnar at Junagadh as per the order dated 12.2.1987 and for declaring that the respondents have no authority or power to degrade the post of Manager to the post of Assistant Manager on the ground of administrative convenience.

On behalf of the respondent corporation, an affidavit in reply has been filed by one D.R. Mankad who is working as Administrative Officer, contending inter alia that the grievance voiced by the petitioner in the petitioner is not legally tenable. It is the case of the respondent corporation that considering various factors including the length of service, date of joining, the respondent corporation is granting the benefit of pay scale of Rs. 425-700 and no person junior to the

petitioner has been given the said pay scale. The respondent corporation has also raised contention about delay in approaching this court. It has also been pointed out that on 23rd May, 1984, the respondent corporation has converted certain posts of Manager from the pay scale of Rs.330-560 to Rs. 425-700. Said benefit of the pay scale was given to the managers who were senior to the petitioner. The petitioner was promoted in the cadre of Manager Gr.II by order dated 30.12.1983 and as such, the petitioner was junior to other managers who were given the higher scale and hence said higher scale was not given to the petitioner. It is also pointed out by the respondent corporation that that the employees on deputation from the Government and also the employees who were directly employed by the corporation are in two different cadres. While considering the promotion to the employees who have come in the respondent corporation on deputation, their length of service with the Government and also with the corporation has been taken into account. While granting promotion to the employees who were directly recruited by the corporation, they are to be given promotional benefits after taking into account their length of service with the corporation. That none of the deputationists have been given the benefit of higher pay scale without taking into consideration all the relevant factors and it is also made clear by the respondent corporation that none of the direct recruits who are junior to the petitioner have been given the benefit of the pay scale of Rs.425-700 and, therefore, the deputationists and the direct recruits cannot be considered to be similarly situated employees. In respect of the successor of the petitioner at Hajira at the time of transfer of the petitioner from Hajira to Hotel Girnar at Junagadh was given the pay scale of Rs.425-700, it has been contended that since the successor of the petitioner at Hajira was in the same pay scale, therefore, he was entitled for the same and as such, he was getting the same. As regards reversion of the petitioner from the post of Manager Gr.II to the post of Assistant Manager at Hotel Girnar, it has been contended that Hotel Girnar was a new hotel and after making the posting, it was felt that a better dynamic person with higher grade was required to be posted at Junagadh for attracting more tourists and developing the business. It was therefore contended that when Shri R.L.Bhatt who was appointed as Manager of Girnar Hotel, the petitioner was merely designated as Assistant Manager. In fact, there was no degradation of the post of the petitioner and that the designation of Assistant Manager was given to him as another person senior to him

was posted over there as Manager; said change of designation of the petitioner was in no way adversely affecting the salary of the petitioner and therefore, it was not reversion of the petitioner in the post of Assistant Manager. The deponent has contended that it was in fact Manager NO.2 position in the said hotel Girnar at Junagadh. It is also pointed out that there are other employees senior to the petitioner who have still not been placed in the pay scale of Rs. 425-700. As regards four employees alleged to be the junior to the petitioner in para 7 of the petition, the deponent has contended that such averments are not true and, therefore same has been denied. It has been submitted that the said four employees namely (1) Shri P.J.Kamdar, (2) Shri D.M.Jadeja, (3) Shri R.B. Mehta, (4) Shri K.N.Lakhdhir, it has been submitted that all said four employees were appointed in the Government from 1972 to 1974 and the benefit of pay scale of Rs. 425-700 was given by taking into consideration their date of appointment in the Government and it was not possible for the corporation to give the same pay scale to all the managers working in different places in the organisation of the corporation otherwise it would lead into discrimination between the juniors and seniors. Therefore, according to the corporation, in fact, no injustice has been caused to the petitioner and there was no discrimination or arbitrariness as alleged and, therefore, the petition is required to be dismissed with costs.

The petitioner has filed affidavit in rejoinder to the affidavit in reply filed by the respondent corporation inter alia pointing out that the Government of Gujarat has, vide resolution dated 24.7.1978, transferred the assets and liability of the Director of Tourism to the respondent corporation. The said Government Resolution dated 24.7.1978 was also produced along with the affidavit in rejoinder wherein it has been inter alia provided that the properties and assets shown in the appendix thereto will stand transferred to the respondent corporation from 1.9.1978. Likewise, the right, title and interest of the Government over these assets were also transferred to the corporation with effect from the said date. In para 6 of the said resolution, it has been provided that with transfer of the assets to the respondent corporation, all the activities pertaining to the Tourist Development which has been undertaken by the Director of Tourism will be discontinued and various posts shown in appendix III of the resolution stand abolished with effect from the aforesaid date. It is also stipulated that as a consequence of abolition of these posts, the officers and the staff in the department

of tourism would have to face retrenchment as it was not possible for the Government to absorb the persons on other vacant posts. It has been contended in the rejoinder that in order to avoid this eventuality, the Government had decided to depute these staff to the respondent corporation with effect from 1.9.1978 on usual terms and conditions of deputation except deputation allowance. It is also stipulated therein that the respondent will observe their work (work of the employees of tourism department) for a period of one year and on completion of this period, the corporation was asked to forward to the Government a list of persons who are found suitable for absorption in the service of the corporation; the condition further provided that on receipt of such list by the Government, the persons who are included in the list for absorption in the corporation service will be given option of being absorbed by the Corporation on the terms and conditions to be decided by the corporation. The petitioner has, thus, contended in the rejoinder that the persons who were originally in the tourism department were to be retrenched, however, they were given an opportunity to serve the corporation for a period of one year and if they are found suitable or fit for absorption, then, the discretion was given to the corporation to send the list of only suitable candidates and thereafter they will be asked to exercise option whether they would like to be absorbed in the corporation or not. On their exercising the option, they will be absorbed on the terms and conditions which may be decided by the Corporation.

The deponent has further submitted in the rejoinder affidavit that on 17.8.1979, the second resolution was issued by the Home Department, Government of Gujarat whereby the deputation of the members of establishment borne on the Director of Tourism was sanctioned on the terms and conditions stipulated in the said Government Resolution. Condition No. 4 provides that the employees who opt to be absorbed in Corporation, their absorption or otherwise will be considered by the corporation. Condition NO. 19 thereof provides that the Corporation shall not promote them to higher post/grade/pay scale etc. or grant new or increased allowance without prior consent of the State Government. Then, condition no. 26 provides that in respect of matter relating to other conditions of service, not specifically provided here, but they will be governed by the Bombay Civil Service Rules and other orders issued by the State Government from time to time. The petitioner has further submitted in the rejoinder that on 10th May, 1979, the respondent corporation issued circular making

clear to such an employee as to whether they would like to get the service of the corporation from 1.9.1979 or not. In response to the said circular, some of the employees have exercised the option for absorption in the corporation and list of such employees was sent to the Government and on the basis of the said list, the Government of Gujarat, by resolution dated 23.5.1980, allowed such persons to retire from the Government service and get absorbed in the tourism corporation Ltd. with effect from the date of expiry of their absorption subject to the conditions stipulated in the said Government Resolution. Conditions in the said Government resolution provides that their pension and gratuity to be paid to such employee, how the commuted pension is to be counted and how their leave is to be adjusted. The petitioner has, thereafter, contended that in the said list, name of Shri P.J. Kamdar, was there who was to be absorbed in the Tourism Corporation and Shri D.M. Jadeja who were yet to be absorbed in the corporation service as clerk and manager Gr.III as on 23.5.1980, the date on which the petitioner was already working as Manager Gr.III. So far as the persons referred to in para 7 of the petition are concerned namely Shri R.B. Mehta and Shri K. N. Lakhdhir, they were absorbed in the service of the corporation vide resolution dated 1.2.1984 which will be clear from the said resolution itself. It has also been pointed out for the purpose of clarification that the employees who were earlier working in the tourism department were absorbed in two groups, one group was absorbed in the year 1980 and the another group was absorbed in the year 1984. The persons at sr.no.1 and 2 in para (7) of the petition were absorbed in the year 1980 and the persons at sr.no.3 and 4 were absorbed in the year 1984 on the post of Manager, Gr.II and Manager Gr.III respectively. It has also been pointed out that on that day i.e. on 1.2.84, the petitioner was working as Manager Gr.II on equivalent post to Shri R.B. Mehta and Shri K.N. Lakhdhir. The petitioner has also pointed out one example that one Shri M.R. Chauhan who was originally working as a clerk in the tourism department and was for the first time absorbed as a clerk in the corporation vide resolution dated 1.2.1984 and who was not only junior to the petitioner but was two grades below to the petitioner has been given higher pay scale of Rs.330-560 with effect from 9.12.1981 and by the same order, he was given the pay scale of Rs. 425.700 with effect from presumably 19.5.1984. Similarly, Mr. Lakhdhir was given promotion with effect from 9.12.1981 in the Manager Gr.III the post which was held by the petitioner from 1979 to 1983 and thereafter admittedly both these persons namely Mr. Chauhan and Mr. Lakhdhir are to be treated as

a Manager, Gr.III with effect from 9.12.1981 whereas the petitioner was appointed as Manager Gr.III on 6.12.1979 and therefore, it has been contended that the petitioner is the senior to these two persons who have been placed in the higher grade of Rs. 425-700 and the same treatment has not been given to the petitioner though he is senior to those two persons. The petitioner has made it clear in paragraph 10 of the rejoinder that in the year 1985, the Departmental Promotion Committee Meeting was held and in that committee, the case of the petitioner was considered and it was directed to place the petitioner in the pay scale of Rs.425-700 by the committee but this decision has not been given any effect by the respondent corporation and the said averment has not been denied by the respondent corporation.

The respondent corporation has filed written submissions before this Court on 19th April, 2000 and the petitioner's learned advocate has made oral submissions before this court at the time when the matter was taken up for hearing. The respondent corporation has also produced the service rules of the Tourism Corporation of Gujarat Ltd. on the record of this petition. Some of the deputationists have been given the benefit of higher pay scale considering their original seniority from the Government which is apparently incorrect and illegal if the Government Resolution has been considered for the purpose of determining the seniority of such employees.

In Special Civil Application No. 2474 of 1983, decision has been given by this court on 22nd January, 1997 (Coram : Mr. Justice S.K. Keshote) wherein the question of seniority has been examined by this court in respect of the persons who were sent on deputation in the corporation from the State of Gujarat and ultimately, this court has declared that the petitioners shall be entitled for seniority and other benefits in the corporation service with effect from 1st September, 1979 and accordingly, directions were issued by this court in the said petition. In the judgment, the claim of the petitioners for seniority and other benefits in the corporation from 1st September, 1978 is rejected by the Court. Learned advocate Mr. H.J. Nanavaty appearing for the petitioner has pointed out that the petitioner was appointed directly on the post of Manager Gr.III vide order dated 28.11.1979 and thereafter he was continued on the said post for some time and subsequently was promoted on 30.12.1983 on the post of Manager Gr.II with effect from 30.12.1983 in the pay scale of Rs. 330-560. Learned advocate Mr. Nanavaty has pointed out that from 1987, the petitioner is working on the post of Manager

Gr.II at Veraval Tourism Rest House and at present also, the petitioner is working at Veraval Tourism Rest House in the scale of Rs.330-560 and no benefit of higher pay scale of Rs.425-700 has been given to the petitioner as upgraded by the corporation by order dated 23.5.1984. He has further pointed out that in Veraval Rest House, the post of Manager Gr.II has been upgraded by revising scale of Rs.330-560 to Rs. 425-700 and, therefore, there is no justification in not extending the benefit of the said higher scale to the petitioner since the petitioner has worked at Veraval from 1987 till the date. Rule 14 of the Rules framed by the Corporation relates to the procedure for recruitment by promotion/selection. Learned advocate Mr. Nanavaty has pointed out from sub rule (1) of rule 14 of the Rules that as soon as it is decided that a certain number of vacancies in the Corporation are to be filled in by promotion/selection the appointing authority prepare a list of all the employees of the corporation eligible for promotion/selection and shall place it before the selection committee together with the service record and statement of particulars of each candidate included in the list in order of seniority. Learned advocate Mr. Nanavaty has also submitted that sub rule (3) of rule 14 of the Rules provides that in respect of the posts to which recruitment is provided by "promotion", selections shall be based on seniority subject to rejection of unfit or unsuitable candidates, without prejudicing their changes for consideration on subsequent event or events. He has further pointed out that sub rule (4) of rule 14 of the Rules provides that the employees with constant/very good outstanding grades will be eligible for promotion after three years and Personnel Committee will have a selection to interview for these persons. According to Mr.Nanavaty, therefore, the petitioner is entitled to the scale of Rs.425-700 as per the office order dated 23.5.1984 and reversion to the post of Assistant Manager by order dated 25.2.1987 is illegal and arbitrary and not to grant legitimate benefit under the Rules and to deny the said legal right to the petitioner by the colourable exercise of powers and in arbitrary manner when his juniors were given the same benefit and treatment and, therefore, according to Mr. Nanavaty, the petitioner is entitled to full reliefs as prayed for in this petition.

On the other hand, learned advocate Mr. Yogesh Vyas appearing for M/s. Trivedi and Gupta for the respondent Corporation has relied upon the written submissions filed before this court which are based on the averments made in the affidavit in reply filed by the

respondent corporation. Learned advocate Mr. Vyas has submitted that the petitioner is not entitled to any reliefs as prayed for in this petition. As a matter of fact, there is no reversion as alleged but the post which was held by the petitioner was redesignated in view of the appointment of the person senior to the petitioner at Hotel Girnar, Junagadh. He has submitted that, therefore, at the most, it can be said to be the post of Manager No. 2 and at that time, when the petitioner was posted as Assistant Manager or designated as Assistant Manager, his salary was not reduced in any manner whatsoever and, therefore, there was no adverse effect of the said decision taken by the respondent corporation and, therefore, the petitioner is not entitled to any reliefs as prayed for in the present petition.

I have considered the submissions of both the learned advocates. I have also considered the averments made in the petition as well as the affidavit in reply and rejoinder filed thereto by the petitioner. I have also considered the written submissions and the rules which were produced on record. It is an admitted fact that the petitioner was directly recruited and appointed on the post of Manager Gr. III by order dated 28.11.1979 at Shukla Tirth Rest House in the pay scale of Rs.260-400. It is also an admitted fact that thereafter, the petitioner was promoted from the said post to the post of Manager Gr.II in the pay scale of Rs.330-560 by order dated 30.12.1983; the petitioner was working at Hajira and thereafter was transferred at Hotel Girnar, Junagadh by the respondent corporation by order dated 12.2.1987. The respondent corporation has upgraded the post of Manager in ten rest houses from the scale of Rs.330-560 to Rs. 425-700 wherein Veraval Rest House, Saputara, Ubhrat, Dwarka, Mandvi, Palitana, Shukla Tirth, Porbandar and Assistant Tourist Officer, Junagadh were upgraded from 19.5.1984. Thereafter, the petitioner was transferred at Veraval Tourist Rest House in the year 1987 and till the date, he has been working on the said post at Veraval. The facts gathered from the record clearly establish that Shri P.J. Kamdar was appointed/absorbed in the year 1980, Shri D.M.Jadeja was also appointed/absorbed in the year 1980 and Shri R.B. Mehta and Shri K. N. Lakhdhir were appointed/absorbed in the year 1984 and initially, all these four persons were placed in the pay scale of Rs.260-400 and subsequently were placed in the scale of Rs. 425-700. Details have been given by the petitioner in rejoinder in respect of the fact that all these persons were junior to him considering the Government Resolution dated 24th July, 1978 and 17th August, 1979 and 3rd Resolution dated

23.5.1980. Shri R.B.Mehta and K.N.Lakhdhir were absorbed vide resolution dated 1st February, 1984. These facts stated by the petitioner in the affidavit in rejoinder have not been challenged or controverted by the respondents by filing any counter to the rejoinder that Shri P.J.Kamdar and Shri D.M.Jadeja were working in the corporation as clerk and Manager Gr.III as on 23.5.1980 respectively and on that occasion, the petitioner was working as Manager Gr.III. It is pertinent to note that these facts stated by the petitioner in rejoinder have not been denied by the respondent corporation. The seniority between the deputationists and the direct recruits has been considered by the Government Resolution and there were two groups of deputationists wherein one group was absorbed in the year 1980 in the corporation and the another group was absorbed in the year 1984 in the corporation. Therefore, in view of these facts which have not been disputed or challenged by the respondent corporation, these four employees whose names are mentioned in paragraph 7 of the petition are junior to the petitioner herein because the petitioner was initially appointed in the year 1979 on 28th November, 1979 on the post of Manager Gr. III and, therefore, the contention of the respondent corporation that the petitioner was junior to those persons is not correct and the same cannot be accepted. Even considering the rules of the corporation, the petitioner is entitled to the benefit of the higher scale of Rs. 425-700 when the post of Manager Gr.II carrying pay scale of Rs. 330-560 has been upgraded in the pay scale of Rs. 425-700. The respondent corporation has not been able to point out any justification for not granting scale of Rs.425-700 to the petitioner when, undisputedly, the petitioner was working as Manager Gr.II in the scale of Rs.330-560 at Veraval Rest House.The post of Manager Gr.II in the scale of Rs.330-560 has been upgraded by the corporation with effect from 19th May, 1984 by order dated 23rd May, 1984. No satisfactory explanation has been given by the respondent corporation to show as to why the said benefit has not been given to the petitioner in their affidavit in reply, written submissions and the oral arguments. It is also necessary to mention at this stage that the averments made in the rejoinder by the petitioner that the petitioner was selected by the Departmental Promotion Committee in the year 1985 and the case of the petitioner was considered by the Departmental Promotion Committee and it was directed by the committee to place the petitioner in the scale of Rs.425-700. These averments made in the rejoinder have not been controverted and/or denied by the respondent corporation. In their affidavit in reply, the respondents have pointed in respect of four

employees namely Mr. Kamdar, Mr. Jadeja, Mr. Mehta and Mr. Lakhdhir that their original entry in the Government service was considered for determining seniority amongst the four employees and the petitioner herein. According to me, such consideration is apparently illegal and contrary to the Government resolutions referred to hereinabove. Therefore, considering the effect of the Government Resolutions pointed out by the petitioner in his rejoinder and referred to in the earlier text of this judgment, said four employees were junior to the petitioner after considering the date of their absorption in the respondent corporation because these four employees were entitled to the pension and gratuity amount from the State of Gujarat and they were receiving such benefit and their seniority has, therefore, to be considered from the date of their respective absorption in the corporation and not from their original entry in the Government service. Therefore, the petitioner being senior and working in the post of Manager Gr.II with effect from 30th December, 1983 is entitled to the benefit of higher scale because of upgradation of the posts in question by the respondent corporation with effect from 9.5.1984. Similarly, said benefits of higher grade of Rs.425-700 was given to the employees junior to the petitioner by the respondent corporation and at that time, the case of the petitioner was not considered by the respondent corporation inspite of fact that various representations were made by the petitioner. Not only that but the respondent corporation has not considered various representations made by the petitioner in respect of injustice caused to the petitioner. Therefore, the petitioner is entitled to the scale of Rs. 425-700 with effect from 19th May, 1984 by order dated 23rd May, 1984 when the post of Manager Gr.II in the scale of Rs. 330-560 has been upgraded to Rs.425-700 wherein the post at Veraval Tourist Rest House and Junagadh both were upgraded by the Respondent Corporation.

The petitioner was transferred from Hajira to Junagadh in the post of Manager Gr.II carrying pay scale of Rs.330-560 by order dated 12.2.1987 and the petitioner had reported at Junagadh by resumption report dated 20th February, 1987 and, thereafter, all of a sudden, by order dated 25.2.1987, the post of the petitioner was redesignated as "Assistant Manager" from the post of "Manager Gr.II" without having any adverse effect in his existing pay scale of Rs.330-560. Said order redesignating the position of the petitioner is apparently illegal and without any jurisdiction. The respondent corporation has not been able to point out why this order has been passed against the petitioner for

redesignating from the post of Manager Gr.II to the post of Assistant Manager. Under the guise of administrative convenience, it cannot be permitted to the respondents to redesignate the petitioner's post from the post of Manager Gr.II to the post of Assistant Manager. According to my view, designation is an important status attached to the post. Suppose, if the scale is not changed and designation has been changed/reduced to the lower level, then, naturally, it will have an adverse effect on the status as well as reputation of an employee. The respondent corporation has not been able to point out any rules which will give power and/or authority to the Managing Director of the corporation to redesignate any employee from any post to the lower post. No such rules have been pointed out by the respondent corporation. In absence of any rules to that effect, the action cannot be said to be justified. The only defence which has been pointed out by the respondent corporation that one Mr. R.L. Bhatt was senior and, therefore, he has been considered as Manager and the petitioner being junior to said Bhatt, has been redesignated as Assistant Manager cannot be countenanced as a valid defence because if said R.L. Bhatt was senior to the petitioner, then, he must be receiving the pay in the pay scale of Rs. 425-700 whereas the petitioner was admittedly drawing the salary in the pay scale of Rs. 330-560 at the relevant point of time. Therefore, in this view of the matter, the action on the part of the respondent cannot be said to be justified. It is settled principle that there are two tests to decide whether an order of reversion is punitive or not. (1) whether the employee has a right to the post or the rank and (2) whether he has been visited with evil consequences. If either of these tests is satisfied, then, it must be held that the employee has been punished. An order of reversion is, in substance and effect, a consolidated order consisting of two parts, an order removing the employee from the position formerly held by him and order appointing him to a position of less dignity in the same service. It amounts to reduction or demotion, that is putting an employee in a lower grade or post. In present case, the petitioner was confirmed employee on the post of Manager Gr.II with effect from 30.12.1983. Junior to the petitioner remained on the post of Manager Gr. II. The petitioner is having right to post being confirmed employee in the post of Manager, Gr.II. Demotion without any justification would adversely affect to the reputation, position and status of the petitioner in the society and service. That itself is the evil consequence, though the salary of the petitioner is protected at the time of demotion. In the rules, no post of Assistant Manager is

available or sanctioned. Therefore, such action of demotion by order dated 25.2.1987 is contrary to rules and also principles of natural justice. Such demotion also adversely affect to future chances of promotion, seniority and position in service. I am, therefore, of the view that there was no need to redesignate the petitioner in the post of Assistant Manager. Before changing the designation of the petitioner and redesignating the same, the petitioner has not been heard and, therefore also, the action in that regard is not justified. If a person working as a Manager is designated as Assistant Manager all of a sudden without any valid justification for the same, naturally, it would adversely affect the status as well as reputation and position of such an employee in the society at large even though it may not be reducing his pay or pay scale. Therefore, the said orders dated 25th February, 1987 without any legal basis are also required to be quashed and set aside since the same has not been justified. The petitioner was not given any opportunity prior to passing the orders adverse to him dated 25th February, 1987 and, therefore, said order dated 25.2.1987 is contrary to the provisions of law and mandate of Article 14 of the Constitution.

IN view the above, I am of the view that the petitioner is entitled to the pay scale of Rs. 425-700 as per office order dated 23.5.1984 with effect from 19th May, 1984 and is also entitled to the benefits of revision of the said pay scale which has taken place from time to time. The petitioner is also entitled to the arrears of difference of salary with effect from 19.5.1984. The order dated 25.2.1987 is also required to be quashed and set aside.

For the reasons recorded hereinabove, this petition is allowed. It is hereby declared that the petitioner is entitled to the pay scale of Rs.425-700 as per office order dated 23.5.1984 with effect from 19th May, 1984 with all consequential benefits. The respondent corporation is directed to give pay scale of Rs. 425-700 to the petitioner with effect from 19.5.1984 on the basis of the office order dated 23.5.1984 on the post of Manager Gr.II and to give arrears of pay and allowances accordingly from 19.5.1984 by taking into consideration the revision of pay that may have taken place from time to time. The order dated 25.2.1987 is hereby quashed and set aside and the respondent corporation is hereby directed to give designation to the petitioner as Manager Gr.II and to grant all consequential benefits as Manager Gr.II. It is further

directed to place the petitioner at appropriate stage in the pay scale of Rs.425-700 and fix his salary after taking into consideration the revision of pay which came into effect in between and to pay all the arrears and other service benefits and difference of salary to the petitioner. The respondents are directed to implement these directions within two months from the date of receipt of certified copy of this order. The petition is, thus, fully allowed. Rule is made absolute accordingly. There shall be no order as to costs.

/7/2000. [H.K. Rathod,J.]

Vyas